**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Implementation of the Local | ) | CC Docket No. 96-98 |
| Competition Provisions of the | ) | Phase II |
| Telecommunications Act of 1996 | ) | |



# BELLSOUTH COMMENTS

BELLSOUTH CORPORATION
BELLSOUTH ENTERPRISES, INC.
BELLSOUTH TELECOMMUNICATIONS, INC.

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## SUMMARY

The Commission need not establish interpretive regulations for Section 251(c)(5) of the Act, which essentially enshrines in statute the Commission's 1980 "all carrier rule." The Commission should eliminate the post-disclosure waiting period in order to facilitate Congress's objective to facilitate rapid development of opportunities for carriers to interconnect their networks. Similarly, the Commission need not prescribe a national dialing parity methodology, but should rather ensure that, whatever methodology is employed locally, end user customers can reach competing providers of LEC services by using identical dialing patterns. The Commission need not address additional pole attachment regulations in the context of this proceeding; the existing complaint procedures, the upcoming pole attachment rulemaking, and, for Bell Operating Companies ("BOCs"), the Section 271 incentives provide sufficient assurances that incumbent LECs will meet their pole access obligations. The Commission's efforts in separate rulemakings concerning number portability and number administration fulfill the statutory requirements of the 1996 Act.

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# BELLSOUTH COMMENTS

BellSouth Corporation, BellSouth Enterprises, Inc. and BellSouth Telecommunications, Inc., by counsel, hereby comment on the remaining issues identified in the Notice of Proposed Rulemaking ("Notice"), FCC 96-182, released April 19, 1996.

## I. DUTY TO PROVIDE NOTICE OF TECHNICAL CHANGES

Section 251(c)(5) of the Telecommunications Act of 1996 (the "1996 Act" or the "Act") requires incumbent local exchange carriers ("LECs") to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks."[1] The Commission solicits comment on a number of tentative conclusions and interpretations of this provision. BellSouth believes that this provision, like many others of the Act, is self-effectuating and needs no interpretive regulations.

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[1] 1996 Act, sec. 101, § 251(c)(5).

At the outset, BellSouth notes that the statutory requirement is essentially identical to the Commission's long standing "all carrier rule". Under that rule, "all carriers owning basic transmission facilities [are required to release] all information relating to network design . . . to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected customer-provided equipment ("CPE") operates."[2] Thus, all facilities based carriers, including interexchange carriers ("IXCs"), competitive access providers ("CAPs"), and other LECs, are already obligated to disclose on nondiscriminatory terms any information that would affect the disclosing carrier's interconnection with another carrier. The Commission has further clarified that this disclosure must be made "in a timely manner and on a reasonable basis."[3] This "all carrier rule" has been in effect since 1980 without need for detailed clarifying regulations. Nothing in the passage of the 1996 Act suggests that further guidance is now necessary.[4] Nevertheless, BellSouth offers the following observations on the Commission's proposals.

The Commission proposes to interpret the clause "information necessary for transmission and routing" as meaning "information in the LEC's possession that affects

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[2] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), (Reconsideration Order), 84 FCC 2d 50, 82-83 (1980).

[3] Computer and Business Equipment Manufacturers' Association Petition for Declaratory Ruling, 93 FCC 2d 1226, 1228 (1983).

[4] Of course, insofar as § 251(c)(5) and the "all carrier rule" share the goal of promoting disclosure of adequate information to facilitate intercarrier interconnection, any rules adopted in this proceeding to clarify the obligation of incumbent LECs under § 251(c)(5) should apply equally to all other facilities based carriers under the "all carrier rule."

interconnectors' performance or ability to provide service."[5] Further, the Commission proposes that incumbent LECs should include in their disclosures information on the "potential impact" of changes to their networks.[6] BellSouth disagrees with these standards insofar as they suggest imposing on the incumbent LEC an implicit duty to know what interconnectors' service performance or abilities are or to be able to assess the potential impact on interconnectors of the LEC's network changes. The better approach would be to interpret the subject clause as referring to information from which an interconnecting carrier would be able to determine *for itself* whether its service performance or abilities might be affected.

The Commission also proposes to interpret "services" (in the clause "transmission and routing of services") to include both "telecommunications services" and "information services" as those terms are defined in the 1996 Act.[7] BellSouth does not object to this interpretation to the extent it is consistent with the existing network disclosure obligation under the Commission's Computer III proceeding.[8] The Commission should confirm, however, that the recognition of information services for purposes of this disclosure obligation does not imbue information service providers with substantive rights under Section 251, except to the extent they are operating as a telecommunications carrier under the 1996 Act.

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[5] Notice, ¶ 189.

[6] Id., ¶ 190.

[7] Id., ¶ 189.

[8] Amendment of § 64.702 of the Commission's Rules and Regulations (Computer III), *Phase I*, 104 FCC 2d 958 (1986); *Phase II*, 2 FCC Rcd 3072 (1987); *subsequent history omitted.*

The Commission also solicits comment on proposed mechanisms for "public" disclosure.[9] In acknowledging that its proposals are based on a "voluntary practice that now exists in the industry,"[10] the Commission has provided its own reason that regulation of this process is not required. BellSouth's disclosure notices are published regularly in the BellCore Digest of Technical Information and made available through other industry forums. No Commission rule is necessary to ensure that this information is broadly available.[11]

The Commission also proposes to interpret the requirement of "reasonable public notice" as meaning "reasonable" in terms of both the time between disclosure and implementation of the relevant network change and the time between a request for information and the LEC's delivery of it.[12] The Commission then solicits comment on what constitute "reasonableness" in each of these contexts and on whether the Commission should establish specific timeframes comparable to those adopted in the Computer III proceeding. BellSouth supports the Commission's proposal to rely on "reasonableness" as the standard against which disclosures should be measured, since this is consistent with the standard already imposed by the all carrier rule. BellSouth cautions, however, against an attempt to define in the abstract what will be "reasonable" in all cases

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[9] Notice, ¶ 191.

[10] Id.

[11] Nor should the Commission take on the role of repository of disclosure notices. Such an administrative task would be redundant with existing industry functions and contrary to the Commission's current initiative to eliminate unnecessary filing requirements. See, Revision of Filing Requirements, CC Docket No. 96-23, Public Notice (Feb. 27, 1996).

[12] Notice, ¶ 192.

and, in particular, urges against adoption of the timeframes applied in the Computer III proceeding.

The network disclosure rules of the Computer III proceeding require a BOC to disclose information related to network changes at the "make/buy point," but then require the BOC to wait a minimum of six months before the new interface can be offered to customers. This disclosure interval thus interjects needless delay into the introduction of new services. Given that one of the objectives of the Act is to facilitate rapid development of opportunities for carriers to interconnect their networks, requiring an incumbent LEC to withhold a new interconnection service until an arbitrary disclosure period has expired would be contrary to the will of Congress.[13] Rather, the Commission should permit the offering of the new interface immediately upon the disclosure of the requisite information.[14]

Finally, the Commission solicits comments on appropriate mechanisms to protect from public disclosure information related to network or national security or that would infringe upon proprietary interests of LECs or third parties. At a minimum, the Commission should permit disclosing LECs to require the recipient of such information to execute a confidentiality agreement, which may include liquidated damages, indemnification, or other appropriate remedial provisions. The Commission should also

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[13] If the Commission does impose some mandatory waiting period, it should confirm that a LEC will not be considered to be negotiating in bad faith if it refuses to make a requested interconnection or unbundling arrangement available prior to the expiration of that waiting period.

[14] Indeed, rather than trying to pattern its rules in this proceeding after those of Computer III, the Commission should revise its Computer III rules.

confirm that LECs are not obligated to disclose proprietary information of third parties, but that any requesting carrier is free to negotiate directly with the third party for access to such information. Mechanisms such as these that balance security or proprietary interests against public disclosure of information are consistent with the statutory provisions of Section 251(c)(5), which require only public "notice" of changes, not publication of the information itself, and that such public notice be "reasonable."

## II. NUMBER PORTABILITY

Section 251(b)(2) of the 1996 Act imposes a duty on all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[15] Although it has established a date to submit comments on number portability in this proceeding, the Commission has not requested any specific comment on issues relating to number portability. The Commission instead states that "we will address number portability issues raised by the 1996 Act in our ongoing proceeding on number portability."[16] The Commission's efforts in its ongoing number portability proceeding satisfy Congress's separate mandate in the 1996 Act for the Commission to "complete all actions necessary to establish regulations to implement the requirements of [Section 251]" by August 8, 1996.[17]

As the Commission is well aware from the record in its number portability proceeding, it is not necessary to address any issues other than the most expedient way to

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[15] 1996 Act, sec. 101, § 251(b)(2).

[16] Notice, ¶ 199.

[17] 1996 Act. sec. 101, § 251(d)(1).

establish number portability (as the term is defined in the 1996 Act) as well as to establish a competitively neutral framework in which the costs of number portability are borne by all telecommunications carriers. In its Notice, the Commission notes that thirteen states have established long term number portability ("LTNP") task forces, and four additional states have selected AT&T's location routing number call processing model without first establishing LTNP task forces.[18] Thus, the most expedient way for the Commission to establish number portability as required by the 1996 Act is to continue its policy of federal/state partnering by allowing the work of the state commissions to continue.[19] Meanwhile, the Commission should establish, through an industry task force comprised of representatives from all classes of telecommunications service providers, broad national LTNP guidelines that any state derived number portability solution must, at a minimum, achieve. Most importantly, the Commission must immediately establish a competitively neutral cost recovery system as required by the 1996 Act.

The Commission should not deviate from Congress' explicit directive to take only those actions necessary to establish technically feasible service provider number portability. Specifically, the Commission must recognize that interim number portability solutions, despite their acknowledged drawbacks, are expressly recognized by Congress as

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[18] Notice, ¶ 200.

[19] The Commission's observation that "approximately 27 states have yet to address issues related to long-term number portability" is not necessarily cause for more direct federal intervention. Moreover, despite the inference that could be drawn from the grammar of paragraph 200 of the Notice, much of the current state LTNP activity predated, or arose independently of, the Commission's current number portability proceeding. Thus, the Commission should be less concerned about state willingness or competence to implement LTNP and more concerned about the overall effect, nationally, of the various state efforts on the reliability of the public switched telephone network ("PSTN").

appropriate for the purposes of Section 271(c)(2)(B)(xi) of the 1996 Act. Thus, the Commission must not waste its limited resources on any further discussion on the costs, benefits, limitations, disadvantages, and availability of interim measures. Rather, the Commission should expressly delegate all matters relating to interim number portability, including cost recovery of interim solutions, to the states. The 1996 Act is clear and the technologies involved and pricing principles are well understood by federal and state regulators. To the extent any dispute arises in the interconnection negotiation process concerning pre-LTNP number portability, the Act's arbitration and judicial review provisions are sufficient to address these issues without the promulgation of unnecessary and temporary federal regulations.

## III. DIALING PARITY

The 1996 Act, at Section 251(b)(3), provides that all LECs have:

> [t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.[20]

As an initial matter, the Commission tentatively concludes that, based on the absence of any distinctions in the 1996 Act among international, interstate and intrastate traffic for purposes of the dialing parity provision, Section 251(b)(3) creates a duty to provide dialing parity with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll

[20] 1996 Act, sec. 101, § 251(b)(3).

services.[21] This tentative conclusion is legally consistent with the definition of dialing parity under the 1996 Act, and the general obligations imposed by Section 251(b)(3) on all LECs.[22]

In its comments filed in this proceeding, the United States Telephone Association ("USTA") demonstrates that the Commission can, in fact, implement, among other things, the dialing parity provisions of the 1996 Act without addressing many of the detailed issues involved. BellSouth supports this position. Specifically, BellSouth agrees with USTA that the Commission correctly notes that national standards are not needed with respect to local dialing parity. End user customers will, as a practical matter, have the ability to make local calls without dialing extra digits as a result of the 1996 Act's equal access, unbundling, number portability and interconnection requirements. The Commission should not constrain a LEC's ability to meet the Act's requirements by mandating national standards that may conflict with more efficient methodologies implemented in response to local conditions.

Specifically, with regard to the Commission's inquiries regarding presubscription methodologies, BellSouth agrees with USTA that any of the methods currently considered by the states are consistent with the Act's requirements. BellSouth is opposed to any attempt to decide upon a single, federally prescribed pre-subscription methodology that

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[21] Notice, ¶ 206.

[22] "Dialing parity", as defined in the 1996 Act, means that a person that is not an affiliate of a LEC is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among two or more telecommunications services providers (including such LEC). 1996 Act, sec. 101, § 3(15).

may possibly undo state specific work already done. Section 251(b)(3) simply requires that end user customers of telephone exchange and toll services are able to reach all competing LECs using the same dialing pattern. Thus, the Commission need not determine which dialing pattern is appropriate. Rather it should ensure, through its general oversight and consultative role established by Congress in Section 251, that regardless of state and regional variations in dialing patterns, in any given local office end user customers are not required to dial additional digits to reach a competing provider of LEC services.

As information, BellSouth is in the process of implementing intraLATA presubscription in Georgia, Kentucky, and Florida. Two additional states, Louisiana and South Carolina, have issued orders which contain the requirements for intraLATA presubscription implementation. Although there are some variances in these states, the basic foundation of "dual PIC" or "2-PIC" (one presubscribed carrier for interLATA traffic and one presubscribed carrier for intraLATA traffic) has remained consistent. Additionally, all states requiring intraLATA presubscription in BellSouth's region have adopted a "marketing" approach for acquiring customers from the LEC. This means that there is no balloting or allocation, rather, billing inserts are used to inform each and every BellSouth customer that they have a choice in selecting telecommunications service providers for intraLATA telephone toll service. BellSouth believes this is a "customer focused" approach and allows the customer the flexibility of selecting the same or different carriers for their intraLATA and interLATA calling. BellSouth has purchased vendor software, loaded switches, modified customer record/billing systems, notified customers,

etc., in order to provide the 2-PIC intraLATA pre-subscription method. BellSouth believes the framework for consistency of standards for dialing parity is existent in the southeast region and therefore does not need to be revisited by the FCC.[23]

BellSouth's experience demonstrates that, from a regulatory perspective, the states are in the best position to implement the dialing parity required under Section 251 of the Act, since they are in the best position to gauge local competition. The absence of federal rules will not pose any difficulties to state commissions. The Commission's concerns with respect to balloting, cost recovery, and the other details of access to services are all issues that do not need to be micro-managed at the federal level. Indeed, the issues are already being addressed at the state level and the guidance contained within the 1996 Act is so clear as to be virtually self-executing. For incumbent LECs, the 1996 Act's regime of a bona fide request for a particular network element, unbundled if technically feasible, is consistent with the Act's dialing parity requirements of access to operator services, directory listings and directory assistance.[24] These are all network elements that have in

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[23] Even where it is not technically feasible to implement a dual-PIC, modified dual-PIC, multi-PIC or Smart-PIC methodology, as may be the case in a limited number of aged switches, dialing parity as required under the 1996 Act can be assured by removing the intraLATA default to the incumbent LEC, thus assuring that no additional digits need to be dialed in order to reach carriers competing with the incumbent LEC for intraLATA toll service. The Commission should confirm that such arrangements are consistent with the Act, and should also defer to State commission waivers that may be granted to LECs in connection with state intraLATA presubscription requirements.

[24] BellSouth agrees with the definition of operator services proposed at Notice, ¶ 216. No Commission action is necessary to implement the nondiscriminatory access requirements for operator services under Section 252(b)(3). The negotiation process and the fact that nondiscriminatory access to operator services is a "check list" item are all the rules that are required to produce the operator services functions needed by other LECs in a timely manner.

fact been requested from BellSouth by telecommunications carriers and are considered technically feasible. The arrangements for these services should be left to negotiation between carriers. Additional federal regulatory intervention is simply unnecessary.[25]

Finally, with regard to an implementation timetable, the Commission should "borrow" the outer limit of three years from the effective date of the 1996 Act for all LECs, subject, of course, to the provisions specific to the BOCs, that is contained in Section 271(e)(2). That section provides generally that BOCs shall provide intraLATA toll dialing parity coincident with their provision of interLATA service, and, with limited exceptions, that states may not require BOCs to implement intraLATA toll dialing parity earlier than the date of the BOC's grant of interLATA authority or February 8, 1999, which ever is earlier.[26] Because all LECs other than BOCs have the ability to provide the full range of telephone toll services, it would be consistent with the Congressional intent of the Act to require all LECs to provide intraLATA toll dialing parity throughout any

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[25] As to access to telephone numbers, the Commission correctly notes that it has already effected the transfer of North American Numbering Plan administration responsibilities, including the LEC's central office code assignment function to a neutral third party. This is an action that BellSouth has long advocated, and it satisfies the Congressional mandate in § 251 of the 1996 Act. However, this administrative action does not address two very real practical problems. First, as long as the delay in appointing members of the North American Numbering Council ("NANC") continues, incumbent LECs will continue to be subjected to unwarranted charges of bias and favoritism as competitive carriers do everything in their power to thwart the LECs' ability to fully compete in the market. Second, while the assignment of the central office code function is being transferred, the real work of implementing the assignment of new codes into the PSTN and its attendant databases is not addressed in the Commission's NANP Order. This work will presumably continue to be done, and the costs will continue to be borne, by the incumbent LEC. The LEC should be entitled to fair compensation for performing this critical function on behalf of its competitors, especially in light of the changes wrought by the NANP Order and the 1996 Act.

[26] 1996 Act, sec. 101, § 271(3)(2).

given state coincident with that LECs' provision of interLATA services originating within the state. In any event, all LECs, including BOCs, must otherwise be required to provide intraLATA toll dialing parity by February 8, 1999.

## IV. ACCESS TO POLES, CONDUITS, DUCTS AND RIGHTS OF WAY

Section 251(b)(4) of the 1996 Act imposes a duty on all LECs to afford access to the poles, ducts, conduits and rights-of-way (collectively, "pole attachments") of such LECs to competing providers of telecommunication services on rates, terms and conditions that are consistent with Section 224.[27] As with so many other provisions of the 1996 Act, Section 251(b)(4) is self effectuating and needs no interpretive regulations. Section 224, as amended by the 1996 Act, provides a general framework for fair access to utility-owned poles.[28] Section 224 has its own regulatory timetable for developing implementation rules;[29] enshrines a key Congressional preference for negotiation in the first instance;[30] and, critically, contains a long-standing procedure for Commission resolution of pole attachment disputes.[31] The Commission specifically seeks comments in this proceeding to address "issues raised by new Sections 224(f) and (h).[32] BellSouth believes that the Commission would do well to clarify a few key elements of Section

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[27] Section 224 refers to the Pole Attachments Act, 47 U.S.C. § 224, as amended by the 1996 Act.

[28] 1996 Act, sec. 101, § 224 (f).

[29] Id., § 224(e)(1).

[30] Id.

[31] 47 U.S.C. § 224(b)(1), 47 C.F.R. § 1.1401 et seq.

[32] Notice, ¶ 21.

224(f) to aid in the resolution of any potential negotiation dispute, but the Commission should defer adopting a rule implementing Sections 224(f) and (h) until the separate rulemaking proceeding which Congress has mandated.[33]

A. Section 251(b)(4) and Section 224(f) are Satisfied When a LEC Provides Excess Capacity to Competing Telecommunications Service Providers on a First-Come-First-Served Basis.

BellSouth has long had a company policy of providing access for pole attachments to communications providers, including cable television ("CATV") companies, CAPs and IXCs, on a first come-first served basis according to standard terms and conditions. Thus, as a practical matter, with respect to BellSouth (and, undoubtedly, other LECs) existing company policy and practice already complies with new Section 224(f). Thus, the Commission should not in any way rush to prescribe general pole attachment regulations that affect matters which are particularly suited to negotiation, and are particularly vulnerable to constitutional challenges. Moreover, in addition to the Act's negotiation, arbitration and judicial review provisions, competing telecommunications service providers have the full benefit of the Commission's pole attachment complaint process, as well as the Commission's increased scrutiny over utility pole owners with respect to attachment practices.[34]

As noted above, the Commission seeks comment on the meaning of "non-discriminatory access," as that term is contained within Section 224(f)(1) of the 1996 Act

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[33] Id., n. 301 and accompanying text.

[34] See Common Carrier Bureau Cautions Owners of Utility Poles, FCC Public Notice, DA 95-35, Jan. 11, 1995.

and "insufficient capacity" as that term is used in Section 224(f)(2). Although the express terms of Section 224(f)(2) apply only to utilities providing electric service (including those which also provide telecommunications service), BellSouth submits there is an inherent "capacity" and "safety, reliability and engineering" limitation contained within Section 224(f)(1) which applies to all pole owners. A LEC cannot be expected to provide access to facilities for which there is no capacity, or for which access would threaten the safety, reliability and engineering of existing attachments. A LEC must further be able to reserve capacity for its own reasonably foreseeable future use, based on its business planning forecast.

There is no evidence that the Commission should now promulgate rules and regulations that will limit a pole owner's ability to make its own good faith judgments as to whether there exists "sufficient capacity" on its poles or in its conduit. Neither should the Commission attempt to describe completely the conditions under which access may be denied for "reasons of safety, reliability and generally applicable engineering purposes."[35] The Commission should not establish regulations that require a certain minimum or quantifiable threat to reliability before a utility may deny access. The Commission's existing pole attachment complaint procedures are now open to all telecommunications providers (except incumbent LECs), and it is within this forum that such disputes can be expeditiously resolved by the Commission on a case-by-case basis.[36]

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[35] Notice, ¶ 222.

[36] The Commission has been especially vigilant in protecting pole attachee's rights against utility pole owners. See Common Carrier Bureau Cautions Owners of Utility Poles, FCC Public Notice, DA 95-35, Jan. 11, 1995. FCC and Common Carrier Bureau Take Steps to Resolve Pending Pole Attachment Complaints, FCC News, Report No. DC 95-87, June
(Continued...)

BOCs, in particular, have a strong incentive to afford access to all telecommunications carriers who request it in order to satisfy the competitive checklist in Section 271 of the act. At the same time, BOCs will be forced to balance such issues as wind resistance, storm loading factors, municipal and local regulations restricting pole height and numbers of pole attachments, the availability of working space between attachments and its effect on the personal safety of outside plant engineers and linemen, the requirements of the National Electric Safety Code, federal and state occupational safety and health agencies, requirements imposed by joint-use pole owners in joint use agreements, industry standards and company safety practices,[37] against making pole attachments available to telecommunications service providers in order to demonstrate compliance with Section 251 and for BOCs Section 271.

All these factors will become aggravated as the numbers of pole attachments increase, and the number of people working on poles from a variety of companies with a disparate range of safety training increases correspondingly. Pole owners must respond flexibly to these concerns in reasonable ways, including, for example, requiring pole attachees to identify their plant with unique colors or other markings and conditioning attachments on a company's willingness to follow other reasonable safety practices. It should be apparent to the Commission that it cannot hope to fashion a "one-size-fits-all"

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16, 1995. BellSouth has never been the subject of a pole or conduit access complaint before the Commission, and has negotiated mutually acceptable settlements with CATV companies who have filed complaints over pole attachments rate increases.

[37] If a BOC feels its own safety standards should exceed industry standards, it should not be forced to dilute or compromise the health and welfare of the public by unnecessary Commission regulation

approach of adopting specific access denial criteria; it should leave the resolution of any attachment disputes to the interconnection negotiation and arbitration process as well as its own pole attachment complaint forum.

### B. The Commission Should Clarify That The Term "Right of Way" Means Only the Public Rights of Way Historically Granted By Franchising Authorities and Does Not Apply to Private Easements

The Commission should clarify that, within the range of pole attachments covered by Section 224, the term "right-of-way" under the 1996 Act means only the public rights of way that have been historically granted by franchising authorities to public utilities. The term right-of-way for the purposes of Section 224 does not extend to private easements acquired through negotiations with private property owners.[38] The Commission should also clarify that a LEC's duty to provide such access does not relieve the requesting party of its obligation to obtain appropriate authority to provide the service which is carried over cable and wire facilities and to obtain permission where necessary from any third party, public or private, with a property interest associated with the particular pole, conduit, duct or right of way.

### C. The Commission Should Defer Addressing Issues Raised in Section 224(h), and all Other Issues Relating to Pole Attachments Terms and Conditions, to its Upcoming Section 224 Rulemaking Proceeding

The Commission's inquiries into such details as what constitutes reasonable notice of rearrangements under Section 224(h) constitutes unwarranted federal micromanagement of private contractual relationships and is inconsistent with the

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[38] Such agreements may limit the right of passage to the pole line owner. A party wishing to attach to such poles must secure its own easement from the property owner.

deregulatory intent of the 1996 Act. LECs, such as BellSouth, have, for years, operated under license agreements with communications providers to voluntarily provide access to poles and conduits. These license agreements contain mutually negotiated terms with respect to all sorts of contractual notice provisions. Now is not the time to begin writing private parties' contracts for them.[39]

The Commission also seeks comment on whether any payment of costs should be offset by the potential increase in revenues to the pole owner, whether a pole owner's potential additional revenues should be redistributed to third party attachees, and, incredibly, whether the Commission should establish a rule limiting pole owners from making "unnecessary or unduly burdensome modifications or specifications."[40] BellSouth answers these questions, which are fundamentally inimical to a free market, with an emphatic "no." These issues can be addressed, assuming for the sake of argument that they need to be addressed at all, in the Commission's upcoming Section 224 rulemaking proceeding. It is unnecessary, given the Commission's powerful oversight and enforcement opportunities afforded by the 1996 Act and existing regulations, to establish such rules in this proceeding.

## V. NUMBER ADMINISTRATION

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[39] Furthermore, in BellSouth's region, telephone companies, power companies and CATV companies participate in the Electronic Pole Transfer Notification Program, an online notification program that greatly increases efficiency. The Commission should recognize that participation such programs satisfies Congress' "written" notification requirement.

[40] Notice, ¶ 225.

Finally, the Commission seeks comment on its tentative conclusion that its NANP Order[41] satisfies the requirement of Section 251(e)(1) that the Commission designate an impartial number administrator, and also seeks comment on the states' roles in numbering administration. BellSouth agrees that the NANP Order satisfies, strictly speaking, the requirement that the Commission designate an impartial number administrator. However, until such time as a neutral administrator has been selected and is operational, nothing, as a practical, matter is accomplished. The North American Numbering Council ("NANC") has 180 days to select a new administrator; after the 180th day the transfer of responsibilities takes place in 90 days, and central office code assignment functions, perhaps the biggest source of contention for the LECs who must administer and implement this function, do not have to be transferred for another 18 months. Thus, full implementation may not take place for a period of 2 years and 3 months. The problem is that the triggering effect for all of this, appointment of NANC members, has not yet taken place and there is no indication of when this event will happen. BellSouth urges the Commission to act expeditiously in this matter.

BellSouth has already provided the Commission with an analysis of how the 1996 Act affects its jurisdiction over numbering matters *viz a viz* the states.[42] Essentially, the jurisdictional balance crafted in the *Ameritech Order* is wholly consistent with the 1996 Act and, moreover, represents the best approach to the federal/state partnership.

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[41] Administration of the North American Numbering Plan, CC Docket No. 92-237, Report and Order, FCC 95-283 (rel. July 13, 1995) (recon. pending); Notice, ¶ 252.

[42] See BellSouth Comments, Further Comments Telephone Number Portability, CC Docket No. 95-116, Public Notice DA 96-358, (rel. Mar. 14, 1996).

Decisions as to the details of area code relief planning, including the decision as to whether to implement an overlay area code or a geographic split, should continue to be left to the local expertise of state commissions. The Commission should clarify that overlays are not prohibited by the Ameritech Order, and are in fact one of several possible alternatives contained in recognized industry guidelines. Federal and state commissions alike should continue to recognize the efficacy of industry fora as the primary venue to resolve numbering issues.

Finally, the Commission has little choice but to allow Bellcore, the LECs and the states the authority to continue performing each of their functions related to numbering administration as they existed prior to the enactment of the 1996 Act until such functions are transferred to the new NANP Administrator pursuant to the NANP Order. The Commission should expedite the transfer process in any way it can. In the meantime, the Commission should delegate additional number administration functions to the states. Specifically, states should be allowed active oversight in central office code implementation activities, including the power to allow for cost recovery, inasmuch as incumbent LECs will continue to perform this function for multiple competing LECs long after the assignment function alone is transferred to the new NANP Administrator.

**Conclusion**

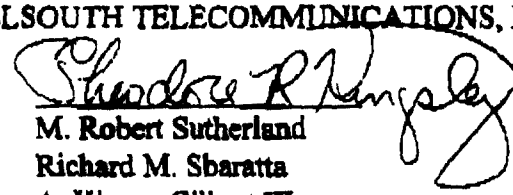
The Commission need not establish interpretive regulations for Section 251(c)(5) of the Act, which essentially enshrines in statute the Commission's 1980 "all carrier rule." The Commission should eliminate the post-disclosure waiting period in order to facilitate the Congressional objective to facilitate rapid development of opportunities for carriers to interconnect their networks. Similarly, the Commission need not prescribe a national

dialing parity methodology, but should rather ensure that, whatever methodology is employed locally, end user customers can reach competing providers of LEC services without dialing additional digits. The Commission need not address additional pole attachment regulations in the context of this proceeding; the existing complaint procedures, the upcoming pole attachment rulemaking, and, for BOCs, the Section 271

incentives provide sufficient assurances that incumbent LECs will meet their pole access obligations. The Commission's efforts in separate rulemakings concerning number portability and number administration fulfill the statutory requirements of the 1996 Act.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH ENTERPRISES, INC.
BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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